

FREEDOM OF INFORMATION ACT (FOIA)
Handbook

TABLE OF CONTENTS

	PAGE
What is the FREEDOM OF INFORMATION ACT (FOIA)?.....	2
What are Exemptions under the FOIA?.....	3
Procedures for a Requester under FOIA.....	4
Procedures for the Base FOIA Manager under FOIA.....	5
Procedures for the Organizational FOIA Monitor (OFM)	9
Procedures for the Office of Primary Responsibility (OPR)	9
OPR Procedures – Denials	14
Processing the Denial	16
Governing Regulations.....	18

WHAT IS THE FREEDOM OF INFORMATION ACT?

FOIA is the chief federal law on openness in the federal government to the public. It establishes procedures for which everyone in the whole world (except fugitives from the law) may request copies of government records. It requires Federal agencies to make available to the public, upon request, as much information as possible.

Passed in 1966; and amended several times, FOIA provides that "any person" is entitled to access agency records—generally, any record in the possession of a federal agency—UNLESS to the extent that it falls under one or more of the applicable exemptions to FOIA. The FOIA establishes the laws on how government employees comply with requests and types of information which may be withheld.

The Freedom of Information Act (5 U.S.C. § 552), as amended by The Open Government Act of 2007 (Public Law No. 110-175, 121 Stat. 2524), states that a FOIA Records Service Center will not assess search fees if they fail to comply with the statutory time limit unless unusual or exceptional circumstances apply to the processing of the request.

Except for exemption (b)(3) [discretionary disclosure of information is prohibited by another law] <http://www.foia.af.mil/shared/media/document/AFD-071207-037.pdf>, disclosure of exempt information is at the discretion of the agency. On January 21, 2009, President Obama signed the "Presidential Memorandum for the Heads of Executive Departments and Agencies on the Freedom of Information Act," which establishes a new policy for Executive Branch departments and agencies concerning disclosure and transparency. The President directed all agencies to administer the FOIA with a clear presumption in favor of disclosure, to resolve doubts in favor of openness, and to not withhold information based on "speculative or abstract fears." In addition, the President called on agencies to ensure that requests are responded to with "a spirit of cooperation," that disclosures are timely, and that modern technology is used to make information available to the public even before a request is made.

WHO CAN FILE A FOIA REQUEST?

- Anyone with a right to see information pertaining to government contract or operational information.
- Individuals
- Commercial entities
- Law firms/Medical Firms/Media Organizations

The FOIA Manager for TAFB is located in the
72d ABW/Communications Directorate, SCOSD (FOIA)
8500 INDUSTRIAL BLVD Bldg 3001G Room 100
TINKER AFB OK 73145

Along with processing the requests for the Air Base Wing, the OC-ALC, the Base FOIA Manager also manages the program for the 38th EIG and AWACS.

Organizational FOIA monitors, OPRs, and management of personnel who process FOIAs need to be familiar with governing FOIA regulations:

- The Freedom of Information Act (5 U.S.C. § 552) http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+5USC552
- The Open Government Act of 2007 (Public Law No. 110-175, 121 Stat. 2524) <http://www.justice.gov/oip/amendment-s2488.pdf>
- DoD 5400.7-R <http://www.dtra.mil/documents/be/5400.7-R.pdf>
- DoD 5400.7-R/AFSupplement http://www.e-publishing.af.mil/shared/media/epubs/DoDR5400.7_AFSUP1.pdf
- DoD 5400.7-R/AFMC Supplement

WHAT IS “EXEMPT” UNDER FOIA?

There are nine (9) exemptions covering (roughly) the following matters:

<http://www.dtra.mil/documents/be/5400.7-R.pdf>

1. Those properly/currently classified in the interest of national defense/foreign policy.
2. Those related solely to internal personnel rules and practices of the DoD or any of its components; purely internal matters (low(b)(2) or any disclosure would risk circumvention of a legal requirement (high (b)(2))
3. Information specifically exempted from disclosure by statute <http://www.foia.af.mil/shared/media/document/AFD-071207-037.pdf>.
4. Confidential trade secrets, commercial or financial information obtained from another, chiefly that which would threaten competitive harm. Confidential commercial or financial information is that generally generated or collected by an entity for use within the entity, and does not cover such information generally generated for disclosure outside the entity, such as sales prices generated for disclosure to one or more prospective buyers.
5. Those containing information considered privileged in civil litigation, primarily under the deliberative process privilege.
6. Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information concerns, would result in a clearly unwarranted invasion of personal privacy.
7. Certain types of records or information compiled for law enforcement purposes—i.e., civil, criminal, or military law.

8. Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.
9. Those containing geological and geophysical information and data (including maps) concerning wells.

These exemptions are merely options to withhold and government agencies may make discretionary releases of this material, except where some other law prohibits its release. If only part of a requested record is exempt, the remainder must be furnished.

A more thorough explanation of the exemptions is contained in DoD 5400.7-R/AF Supplement, Chapter Three.

http://www.e-publishing.af.mil/shared/media/epubs/DODR5400.7_AFSUP1.pdf

PROCEDURES FOR A REQUESTER UNDER THE FOIA:

Every agency is required to publish regulations telling the public how to submit FOIA requests to the appropriate agency. (DoD 5400.7-R/AF Sup/AFMC Sup)

Tinker AFB and every other government installation maintains a "reading room" that the public may access; it shows the governing regulations and the requester may submit his request through this means.

Requesters may submit their requests via:

USPS mail

72 ABW/SCOSD (FOIA)
8500 INDUSTRIAL BLVD
BLDG 3001G
TINKER AFB OK 73145

Tinker FOIA website: <http://www.tinker.af.mil/library/foia.asp>

Fax: 405-734-3214

Requesters must meet certain requirements before a FOIA request from them will be accepted and processed by the Base FOIA Office:

1. Must be in writing and cite the FOIA.
2. Clearly identify the record(s) being sought and be specific on the type of documents. Avoid terms such as "requesting any and all documents" since this type of request generally requires clarification and responsive documents can include excessive costs for search and releasable documents.

NOTE: Recommend asking for "all releasable information" in your request. This

allows the FOIA office to redact or remove information generally exempted under the FOIA program and process your request quicker. FOIA provides access to records and "is not" a forum for answering questions.

3. Indicate a willingness to pay fees associated with the processing the request or, in the alternative, why a waiver may be appropriate (see [DoD5400.7-R/AF Supplement, section C6.1.4., Fee Waivers](#)). State an actual dollar amount versus a willingness to pay reasonable costs. This avoids guessing what is considered reasonable and you can be contacted should processing costs exceed your limit.
4. Include a complete mailing address and consider providing a telephone number and/or e-mail address. Should questions arise you will be contacted.

The request is considered properly received or perfected, when the above conditions have been met and the request arrives at the FOIA office of the Component or agency in possession of the records. FOIA requests are processed within 20 work days unless there are unusual circumstances that may justify delay whereby the requester will be contacted.

A requester does not have to justify why they are requesting these certain records and you should not ask them their reasons for wanting these records. However, requester may volunteer such information in its request or otherwise, and such reasons may be considered with respect to those exemptions like (b)(6), which permit disclosure decisions based on interest being protected exemption against the purpose or need of the requester.

A requester is not limited to the number or scope of records they ask for, or the number of requests that they may submit.

Regarding the fees, fees may be waived based on public interest; this is a decision to be made strictly by the Base FOIA Manager. Also, a fee total less than \$15, will be waived.

PROCEDURES FOR THE BASE FOIA MANAGER

The Base FOIA Manager will assure that the requirements for submission of a FOIA request have been addressed as cited above before it is accepted for processing.

All FOIA requests must come through the Base FOIA Office before they will be processed.

The request will then be assigned a FOIA case number and logged in according to the DoD FOIA tracking system called FOIAXpress.

The case will be assigned to the organization(s) that may have responsive records.

The Base FOIA Manager will assemble a FOIA package that will state the date by which the decision authority must make a decision of which responsive records will be disclosed and/or withheld. If the disclosure authority recommends denial of any information or defers decision to the initial denial authority (IDA), the disclosure authority must make its decision in sufficient

time for the IDA to review the records and recommendations, make a decision and return that decision to the FOIA office not later than the suspense date.

The FOIA package will come with a RUSH – FOIA Cover sheet, an AFMC Form 559.

<http://www.e-publishing.af.mil/shared/media/epubs/AFMC559.xfdl>

The package will contain specific suspense dates followed by the original copy of the request.

FOIA Request for Contract Information Suspense's

PLEASE READ THIS FIRST

- ❖ A Freedom of Information Act (FOIA) request has been submitted for which your office is the OFFICE of PRIMARY RESPONSIBILITY (OPR)
 - The FOIA case number is 2010-xxxxx-F. (refer to the FOIA case number in all correspondence)
 - Initial suspense is **Day/Month/Year**
 - **Final suspense is Day/Month/Year**
 - Overdue on **Day/Month/Year**
- ❖ FOIA Monitor Requirements:
 - Insure that the Office of Primary Responsibility (OPR) receive this initial tasking.
 - Respond to Tinker FOIA Office by **Day/Month/Year** with OPR
 - ◆ Email: tinker.foia@tinker.af.mil, phone 405-734-2633
 - Follow up with OPR to make sure all suspense's are met
- ❖ OPR Requirements:
 - Analyze the request for clarifications. If any clarifications need to be made with the Requester, email them to the FOIA Manager, with a copy to the organization FOIA Monitor by **Day/Month/Year**. Please remember we can only toll the clock **ONCE** for clarifications with the requester
 - If the request is for contract information, analyze the contract information for any arguably confidential commercial information by **Day/Month/Year**.
 - If there **IS** arguably confidential commercial information:
 - Send the list of arguably confidential commercial information to the FOIA Manager to correspond with the Submitter by **Day/Month/Year**. (*Notice that you are to list specifically the information you want the requester to review.*)
 - ◆ Fee resolution. If cost to process request will exceed what Requester agreed to pay
 - Complete "Estimate" DD Form 2086 by **Day/Month/Year**
 - ◆ Email "Estimate" to FOIA Manager, with a copy to organization FOIA Monitor

The final page of the package will be the DD2086, FOIA Cost Sheet.

The FOIA package is then sent to the appropriate organizational FOIA monitor, who will immediately assign to the OPR.

Bi-Weekly status request will be sent out by this office to all suspended organizations. If more than one organization is going to recommend denial of records, those organizations must decide which organization is recommending denial of the greatest volume of records in sufficient time for that organization to prepare the combined denial recommendations and denial package to the IDA, obtain the IDA decision by the suspended date. All other organizations recommending denial of records will cooperate with and assist the designated organization in preparing the denial package, including furnishing proposed denial language meeting the requirements of DOD 5400.7-R/AFSUP, Para C5.2.5.3 for the records that organization decision. DOJ requires agencies to identify and use every exemption that applies to the information withheld in the denial decision.

If the suspense is not going to be met, notify the FOIA office immediately as to why, so proper procedures can be taken to notify requesters. If the suspense cannot be met, it will be elevated to higher management to adjust resources to meet the statutory time limit suspense. If one of the three statutory unusual circumstances exist or are encountered, notify the FOIA manager immediately, identifying the nature of the unusual circumstance, and why it was Necessary. If the FOIA manager, is satisfied a statutory unusual circumstance may prevent meeting the 20 working day time limit, the FOIA manager will grant the statutorily mandated 10 additional working days to the suspense date and ensure that the FOIA request file is properly annotated as to which of the three statutorily specified usual circumstance were encountered or required to process the request and why.

According to the Openness in Government Act of 2007, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests—

- (I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;
- (II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or
- (III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

It is very important to remember that FOIA requests are to be given the utmost priority above all other duties.

PROCEDURES FOR THE ORGANIZATIONAL FOIA MONITOR (OFM)

The OFM is the primary POC for all FOIA matters for a particular organization.

If you or anyone within your organization receives a FOIA request direct, you should route it through the FOIA office immediately.

The OFM receives the FOIA package from the Base FOIA Manager.

The OFM will review the request to determine the appropriate OPR to work the request for those records within that organization.

The OFM will suspense the OPR to assure that the response is returned to the Base FOIA Manager's Office by the assigned suspense date as indicated on the AFMC FORM 559.

The OFM will be the POC to respond to any inquiries that the FOIA Office has concerning the FOIA(s) currently being worked by that organization.

The OFM will review the FOIA package when it is returned to them to be sure the responsive records are attached, and that the DoD FORM 2086 is filled out. The OPR will fill out the time spent in each of the applicable search, review, and copying categories.

The OFM will track the FOIA packages from receipt to final processing and completion.

If you, as the organizational FOIA monitor, have any questions at all, do not hesitate to call the FOIA office at 405-734-2633.

It is very important to remember that OPRs are NOT to release requested documents direct to the requester. – Releasable records and decision documents MUST come back through the FOIA office for mailing to the requester. If the decision is to disclose all records, the disclosure authority (squadron commander/director) will annotate that decision on the AFMC Form 559 in section III, with the OPR indicating his/her recommendation concerning disclosure in section II. If it is recommended to withhold any record with the concurrence of the legal office (in section IV), that recommendation will be annotated on the AFMC Form 559

PROCEDURES FOR THE OPR OF THE FOIA REQUEST

The OPR of the FOIA request will review thoroughly the FOIA request for any clarifications that need to be made with the requester, if so, send the clarification request to the FOIA Manager. The FOIA manager can stop the clock once – and only once -- for clarifications with the requester so please make sure you ask all the questions that need to be asked for clarification purposes. After clarifications have been made (if needed) the OPR is required to do a diligent search for all responsive records in the organization and make recommendations on the releasability of all records located. Before reviewing responsive records, the OPR should review the exemptions as listed on page 3

<http://www.dtra.mil/documents/be/5400.7-R.pdf> and the OC-ALC/JA FOIA website

<https://www.my.af.mil/gcss-af/USAF/ep/globalTab.do?channelPageId=s6925EC1349C30FB5E044080020E329A9> and Appendix 11, which should provide sufficient guidance, for the OPR to make informed recommendations, with good rationales, for the recommendations. An objection to disclosure by a submitter/contractor is not sufficient rationale to deny information.

(ADDED)(AF) AP11. APPENDIX 11
REQUIREMENTS OF TITLE 5 UNITED STATES CODE SECTION 552 (b)(4)
TO SUBMITTERS OF NONGOVERNMENT CONTRACT-RELATED INFORMATION

AP11.1. General. The FOIA requires federal agencies to provide their records, except those specifically exempted, for the public to inspect and copy. Section (b) of the Act lists nine exemptions that are the only basis for withholding records from the public.

AP11.1.1. In this case, the fourth exemption, 5 U.S.C. 552 (b)(4), may apply to records or information the Air Force maintains. Under this exemption, agencies must withhold trade secrets and commercial or financial information they obtained from a person or organization outside the government which is privileged or confidential. This generally includes information provided and received with the understanding that the Air Force will keep it privileged or confidential.

AP11.1.2. Commercial or financial matter is “confidential” and exempt if its release will probably:

AP11.1.2.1. Impair the government’s ability to obtain necessary information in the future.

AP11.1.2.2. Substantially harm the source’s competitive position or impair some other legitimate government interest such as compliance and program effectiveness.

AP11.2. Applicability of Exemption. The exemption may be used to protect information provided by a nongovernment submitter when public disclosure will probably cause substantial harm to its competitive position. Examples of information that may qualify for this exemption include:

AP11.2.1. Commercial or financial information received in confidence with loans, bids, contracts or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries or other proprietary data. (**NOTE:** Certain proprietary and source selection information may also fall under exemption (b) (3), under the provisions of 10 U.S.C. 2305 (g) or 41 U.S.C. 423, if statutory requirements are met.)

AP11.2.2. Statistical data and commercial or financial information concerning contract performance, income, profits, losses and expenditures, offered and received in confidence from a contractor or potential contractor.

AP11.2.3. Personal statements given during inspections, investigations or audits, received and kept in confidence because they reveal trade secrets or commercial or financial information, normally considered confidential or privileged.

AP11.2.4. Financial data that private employers give in confidence for local wage surveys used to set and adjust pay schedules for the prevailing wage rate of DoD employees.

AP11.2.5. Information about scientific and manufacturing processes or developments that is technical or scientific or other information submitted with a research grant application or with a report while research is in progress.

AP11.2.6. Technical or scientific data a contractor or subcontractor develops entirely at private expense, and technical or scientific data developed partly with federal funds and partly with private funds, in which the contractor or subcontractor retains legitimate proprietary interests per 10 U.S.C. 2320-2321 and Title 48 CFR.

AP11.2.7. Computer software copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would adversely impact its potential market value.

AP11.3. Submitter's Written Response. If release of the requested material would prejudice your commercial interests, give detailed written reasons that identify the specific information and the competitive harm it will cause to you, your organization or your business. The Act requires the Air Force to provide any reasonably segregable part of a record after deleting exempt parts. If deleting key words or phrases would adequately protect your interests, advise us in writing which portions you believe we can safely release and which portions you believe we need to withhold from release. If you do not provide details on the probability of substantial harm to your competitive position or other commercial interests, which would be caused by releasing your material to the requester, we may be required to release the information. Records qualify for protection on a case-by-case basis.

AP11.4. Pricing Information. Generally, the prices a contract charges the government for goods or services would be released under the FOIA. Examples of releasable data include (a) bids submitted in response to an invitation for bids (IFB), (b) amounts actually paid by the government under a contract and (c) line item prices, contract award price and modifications to a contract. Unit prices contained in a contract award are considered releasable as part of the post-award notification procedure prescribed by the Title 48 CFR unless they are part of an unsuccessful proposal, then 10 U.S.C. 2305(g) protects everything including unit price.

Examples of contract information objected to by submitters, which generally are releasable over objection are liquidated damages, award fee plans, award fees, government performance work statements and statements of work, obligated or realigned funds, estimated costs to the government, and contract quantities.

Examples of information in contracts objected to by submitters that generally should be withheld include base fees, fixed fees, unburdened hourly rates, contractor subcontracting plans, contractor statements of work, and contractor payment instructions like the names of banks, bank routing numbers, and account numbers.

The OPR will examine whether any information in the responsive records is exempt from mandatory disclosure and consider, based on a presumption to disclose, whether there is a significant government interest that needs to be protected from disclosure based on the likelihood of harm to a legitimate government interest. The OPR cannot use speculative or abstract fears or rationales of harm to deny the requester information that is not exempt from mandatory disclosure. The OPR shall send the FOIA Manager a list of Arguably Confidential Commercial Information within the requested records and the FOIA Manager will write a submitter notification letter to send to the submitter/contractor (per Executive Order 12600) and allow them (the submitter/contractor) 10 business days to respond with their justification for non-release (if applicable); or, the submitter may state it is okay to release the information to the requester. **As soon as the OPR makes this assessment, the OPR should contact Howard Bain (739-8618) JA for guidance and further instruction** regarding denying disclosure of information requested through FOIA or disclosing information to which a submitter/contractor objected, or when the submitter/contractor did not respond to the submitter notification letter.

We are not to inquire of the requester why they want these records, however, if it is unclear as to what specifically is asked for, you as the OPR should email questions to the FOIA Manager (tinker.foia@tinker.af.mil) who will contact the requester for clarification.

If it is determined the records are totally releasable, the OPR will obtain a copy of the records. The OPR shall sign in section II of the AFMC FORM 559, with the Release Authority (Squadron Commander/Director) level signature in Block III of the AFMC 559, marking the applicable square.

The entire original FOIA package, along with the releasable records will be routed through the FOIA Organizational Monitor and back to the FOIA Office for release to the requester.

For any records deemed to be withheld under the FOIA, they must fall under one of the exemptions cited on page 3. <http://www.dtra.mil/documents/be/5400.7-R.pdf> If it is determined that some of the requested records are not maintained at Tinker AFB, or we are not authorized to release them, then provide the name/address of where this request may be transferred in Block II of the AFMC Form 559 and notify the FOIA manager.

The OPR must work closely and consult with the legal office (JA) in all situations described in the second paragraph of this section to ensure that the recommendations and rationales meet legal requirements and prior IDA decisions. If there are substantive questions concerning the application of any exemption or any submitter objection, the OPR is to call JA at 739-5811.

If the OPR determines that part or all of the requested records may not be released to the requester, they are to follow denial procedures outlined below.

The OPR is to give priority to any FOIA request they are assigned. They must meet the assigned suspense dates.

Exemption (b) (4) Processing Procedures: When the OPR has determined that the requested information falls under exemption (b)(4) (confidential commercial, financial, and trade secret information obtained from a non-government source,) processing procedures, they will immediately notify the FOIA Monitor, who notifies the FOIA Manager. The OPR shall send the FOIA Manager a list of Arguably Confidential Commercial Information within the requested records and the FOIA Manager will write a submitter notification letter to send to the submitter/contractor (per Executive Order 12600) and allow them (the submitter/contractor) 10 business days to respond with their justification for non-release (if applicable). Alternately, the submitter may state it is okay to release the information to the requester. Or thirdly the submitter may not even respond. The FOIA Office has the responsibility to notify the requester of the requirement of Exec Order 12600 with a (b)(4) extension letter. When a Submitter Notification Letter is sent, the time limit specified above for IDA to issue his disclosure/denial decision can be extended a maximum of an additional 10 business days. After response from a submitter, the justification must be analyzed by the OPR and the OPR analysis must be approved by JA. Full denial or partial denial packages must be prepared and signed by the Initial Denial Authority (IDA). A submitter determination letter signed by the IDA must be sent whenever we release information over the submitter's objection; when the submitter does not respond to the notification, the FOIA Manager signs the submitter determination letter.

PROCEDURES FOR THE OPR -- REQUEST MAY BE DENIED OR PARTIALLY DENIED

The OPR may recommend that part or the entire request cannot be released.

The OPR should notify the FOIA monitor and the FOIA manager as quickly as it is known.

The OPR should review the FOIA exemptions <http://www.dtra.mil/documents/be/5400.7-R.pdf> and the OC-ALC/JA FOIA website to determine which may be applicable to any information responsive to the request. There may be more than one exemption applicable. The Department of Justice requires the agency denial decision to cite all applicable exemptions applicable to the information that the agency plans to withhold.

- The OPR should review the JA Website, which can be found at: Tinker Homepage
- AFMC Assigned units
- Staff Judge Advocate
- Handouts
- (last) handouts

The OPR should then call JA (739-5811) to discuss. You should be prepared to justify the reasons for denial, partial denial, and/or release over objection.

JA will advise you as to what handouts to use on the JA website, you will be advised to prepare a "DENIAL, PARTIAL DENIAL and/or RELEASE OVER OBJECTION PACKAGE" for the request.

After JA has made suggestions and you have written your letters, JA will assign an attorney for you to work with.

JA will render a written opinion (formal or e-mail) to agree or disagree with your recommendations and rationales as stated in the draft decision documents and provide any additional guidance to assure agreement prior to assembling the IDA approval package.

The package you put together will be determined by the following, whichever applies:

If the OPR decides not to deny any information and the Submitter/contractor doesn't object there is a total release. The FOIA Manager will sign the Submitter Determination Letter, which should be on 72ABW letterhead (example).



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 72D AIR BASE WING (AFMC)
TINKER AIR FORCE BASE OKLAHOMA

If the OPR wants to deny or the Submitter objects and the OPR agrees with the objections, a Denial Letter (signed by the IDA on BLUE OC-ALC letterhead) will be sent to the Requester. There will be no Submitter Determination Letter.

If the OPR agrees to deny part of the Submitter's objections but not all, a Partial Denial Letter signed by the IDA on BLUE OC-ALC letterhead) is sent to the Requester and Submitter Determination Letter signed by the IDA on BLUE OC-ALC letterhead) that addresses why objected to information will be disclosed).



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS OKLAHOMA CITY AIR LOGISTICS CENTER (AFMC)
TINKR AIR FORCE BASE OKLAHOMA

If we don't want to deny anything that the Submitter objected to, we will send a Submitter Determination Letter (signed by the IDA on BLUE OC-ALC letterhead) that will address why objected to information will be disclosed. A letter to the requester will be sent saying the records will be released in 14 days if we don't get an injunction from the submitter, signed by the FOIA Manager.

The OPR must have a copy of the records involved AND will highlight the portion(s) that are to be denied and will notate the exemption/s for each page/portion that is to be withheld for the IDA review.

The FOIA statute allows for only certain positions to be able to deny any information to a requester or to disclose records over objection—this position is called an INITIAL DENIAL AUTHORITY (IDA).

The IDA is located in the OC-ALC/JA. This is the only position that will be able to sign off on the denial package.

NAME
OC-ALC/JA
7460 Arnold Street, SE Wing
Tinker AFB, OK 73145-9002

Signature Block goes 13 spaces right of center

Signature Block:

(NAME), (RANK) USAF
Staff Judge Advocate

PROCESSING THE DENIAL, PARTIAL DENIAL, AND/OR RELEASE OVER OBJECTION

At this point in time, you (the OPR) and JA have coordinated on a partial/total denial and/or release over objection and agreed on the supporting exemptions and justifications.

To finish assembling the denial package, you will need the records concerned with the denied sections highlighted in yellow. You will ALSO need a copy with those highlighted portions excised out (redacted). This will be the copy released to the requester.

Please note that according to the Department of Defense you cannot use a sharpie to redact, you must either cut out or use correction tape and then make a copy of that copy. You could also use approved redacting software, such as Redax or RedactXpress. This software is available on the common-use terminal at the FOIA office. If you use anything besides RedactXpress for an electronic copy, you must print the records, then scan them back in. **NO EXCEPTIONS.**

You will need to prepare a Denial, Partial Denial and/or Release Over Objection Package, and this will consist of the following:

- TAB 1: Denial Letter to the Requester
Or
- TAB 1A: Partial Denial Letter to the Requester

- TAB 1B: Submitter Determination Letter
- TAB 2: Original Request, AFMC Form 559, DoD Form 2086
- TAB 3: JA Opinion or concurrence(email or letter opinion)
- TAB 4: Records to be Released (this is the excised copy)
- TAB 5: Records being Denied (the highlighted copy)
- TAB 6: Submitter notification letter
- TAB 7: Submitter's objection letter

Verify the OPR and disclosure authorities have signed the Form 559 in Tab 2 before delivering the completed package to the FOIA office for the FOIA Manager's approval.

From there, you will deliver the package to your assigned attorney. Stick a note on the front of the package for JA to notify you @ extension xxxxxxxx after signature to pick up. The attorney will give the package to the IDA for signature and you'll be called to pick it up for return to the FOIA office when it has been signed.

After you have picked up your completed FOIA denial, partial denial, and/or release over objection package, you will notify your OFM that the package is completed. You must make copies of your completed FOIA Package and retain with the contract.

HOWEVER, ALL ORIGINAL MATERIALS ARE TO BE KEPT IN THE FOIA PACKAGE AND THEN DELIVERED TO THE FOIA OFFICE FOR THE FINAL PROCESSING TO THE REQUESTER. The decision documents can only be mailed by the FOIA Manager. Ensure that the package returned to the FOIA Office includes records of all communications concerning this FOIA request.

It must be delivered back to the Base FOIA Office through your OPM as quickly as possible for final processing.

MISC FOIA PROCESSING NOTES

Creating a Record: Reference DoDR/AF Sup, Para C1.5.7 – C1.5.7.2:

“A record must exist and be in the possession and control of the DoD at the time of the search to be considered subject to the Regulation and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. A DoD component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object.”

“.....the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent..... when responding to FOIA requests for electronic data where creation of a record, programming or particular format are questionable, components should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, the request should be processed.....However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources like writing a search program because the requested may be in an electronic records system but the information is not accessible using existing search programs because the request parameters do coincide the governments use of the records, thus, NOT being a normal business as usual approach....”

OTHER OPR CONCERNS:

CLARIFICATIONS AND MODIFICATIONS OF REQUESTS WILL BE REFERRED TO AND HANDLED BY THE FOIA MANAGER: OPRS are not authorized to be involved in such communication with the requester.

WEB ACCESSIBLE: If the requested records are fully releasable and available from a website, inform the FOIA Manager so they can direct the requester there; annotate the AFMC 559 and return.

FOIA GOVERNING REGULATIONS

The Freedom of Information Act (5 U.S.C. § 552), as amended by The Open Government Act of 2007 (Public Law No. 110-175, 121 Stat. 2524)

DODR 5400.7R - DOD Freedom of Information Act Program
(September 1998)

AF Supplement – DOD Freedom of Information Act Program
(24 June 2002)

AFMC Supplement - FOIA Program – 20 January 2000

Freedom of Information Act (FOIA) Handbook (72ABW/SCOSD)
(February 2009)